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Date	13 DEC 2017

BRIEFING FOR THE MINISTER OF POLICE

Priority	<input type="checkbox"/> Urgent <input checked="" type="checkbox"/> Non-urgent Briefing in advance of a possible bid for priority on 2018 legislation programme		
Subject	Arms Act Administration		
Date	7/12/2017	Ref	BR/17/06SN

Executive summary

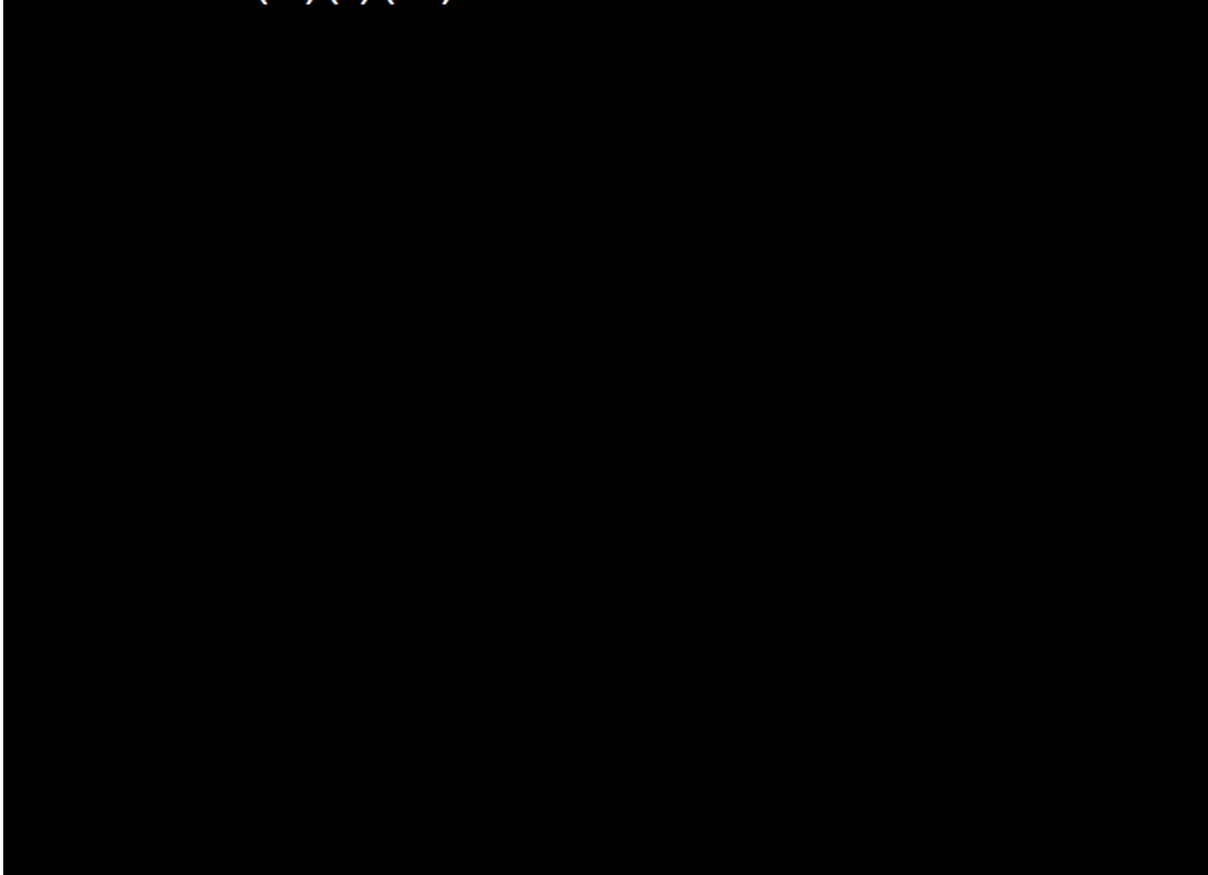
1. The Minister of Police is responsible for Police's administration of the Arms Act 1983 (the Act).
2. The Arms Act has not been significantly updated since 1992 and has not been adjusted to take into account changes in the marketplace, changes in technology and increased civilian access to the worldwide firearms market.
3. The failure to provide for the possible manufacture of firearms in New Zealand, or for the interchangeability between 'A category' semi-automatics and military style semi-automatics (MSSAs), or for the conversion of an 'A category', semi-automatic firearm to a military style semi-automatic (MSSA) by the addition of an unregulated high-capacity magazine has opened up a risk of criminal harm, and undermines Parliament's intention to limit the number of MSSAs in New Zealand.
4. Consequent risks to public safety have been drawn to the attention of Government over several years and sadly played out in the July 2017 dual homicides in Northland.
5. Some in the firearms community will see closing off the identified loopholes as an erosion of the privilege they have earned by being considered fit and proper to possess a firearm. Their concern must be balanced against the inherent public safety risks arising from criminal exploitation of the gaps in the regulatory framework.
6. The regulatory framework cannot on its own fully mitigate the public safety risks associated with an estimated 1.5million firearms possessed in the civilian armoury. It also requires accurate vetting of licence holders, their willingness to comply with the requirements, and risk-related monitoring and compliance auditing by Police.

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7. Firearms community support for Police's administration would benefit from enabling electronic applications for licences and permits through amending the provisions of the Arms Regulations 1992 (the Regulations).
8. There is also opportunity to improve the resourcing of the administration of the Arms Act by reviewing the fee setting regime in the Regulations so that the regime better reflects the private benefit gained by licence holders, particularly dealers and importers.
9. Amendments to the Act and to the fee setting regime will require consultation with the Firearms Community Advisory Forum in the first instance followed by wider public consultation.

Recommendations

Section 9(2)(f)(iv) Official Information Act 1982



Minister's comments and signature

Stuart Nash

..... 13 / 12 / 2017

Hon Stuart Nash
Minister of Police

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Arms Act Administration

Purpose

1. This note is in two parts.
2. Part One advises of the need to amend the Arms Act 1983 (the Act) to deliver on the safe use and control strategies embodied in the Act, and
3. Part Two advises of the improvements in the both efficiency and effectiveness of administration of the Act that can be delivered through amendment to the Arms Regulations 1992.

Part One

Background – Framework of the Arms Act 1983

4. The Minister of Police is responsible for Police's administration of the Act, and ensuring Police's implementation of the Act delivers on the overall objectives of achieving the safe use and control of firearms and other weapons.
5. The framework of the Act is structured around four strategies for effecting gun control¹:
 - promoting acceptance of responsibility for exercising the privilege of ownership and safe use of a firearm;
 - reducing the availability of firearms to high-risk users;
 - restricting high-risk uses; and
 - restricting high-risk firearms.
6. The strategies involve legal restrictions that are proportionate to the risk to public safety and take into consideration the potential benefits from legitimate use – recognising there is no statutory right to own or possess firearms, and no statutory right to possess or own a component of a firearm.²
7. For a civilian to own a firearm that person must be assessed by Police to be 'fit and proper'.
8. There are three legitimate purposes for private firearms ownership:
 - business purposes – livestock farming, pest control, commercial supply of firearms, and theatrical purposes;
 - recreational purposes – such as hunting, collecting, historical re-enactments, and games; and
 - sporting purposes – competitive target shooting under controlled conditions.

¹Thorp in his Report on the Review of Firearms Control in New Zealand June 1997 noted these approaches are common to effecting gun control in Western countries.

²Thorp 1997, Report of the Regulations Review Committee 2014

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9. The risk created by a particular type of firearm is derived principally from its usefulness for criminal purposes, and, if misused, its dangerousness or lethality, which in turn is related to its magazine capacity, rate of discharge, and the size and speed of its projectiles (muzzle energy).
10. The success of the strategies relies on:
 - the effectiveness of the assessment of the fit and proper status of the person applying for a licence or endorsement to possess firearms or weapons;
 - the licence holders' adherence to legal requirements – particularly import controls, secure storage, and transfer of ownership;
 - regular risk-related monitoring and auditing of compliance; and
 - the effectiveness of enforcement.
11. Each part of the system must be applied successfully to deliver public safety. For instance a 'fit and proper' assessment once every ten years must be supported by an ability to suspend a licence, when new information becomes known.

The regulatory framework is outdated

12. The Act as it currently stands has not kept pace with changes in the marketplace, technology and accessibility to high risk firearms.
13. The Act was last significantly amended in 1992 following the Aramoana homicide of 13 people by an offender who owned four semi-automatic firearms. Two of these post-1992 would have been defined as military-style semi-automatics (MSSAs).
14. The 1992 Amendment sought to restrict access to MSSAs by creating a regime of tight controls over their number and use, and by treating them similarly to pistols and restricted weapons by requiring:
 - greater storage security standards;
 - each MSSA firearm to be specified on the owner's endorsed licence;
 - a permit to procure prior to taking possession of a MSSA; and
 - an import permit and special reason to import a MSSA or MSSA part.
15. The restrictions imposed through this amendment impacts on the market price for an imported MSSA and introduces an incentive to seek to obtain through other means.

An out of date regulatory framework has increased the public safety risk from firearm misuse.

16. In 1996, at the request of the then Minister of Police, Justice Thorp undertook a Review of Firearms Control in New Zealand from which came a comprehensive set of recommendations in June 1997. Those recommendations that could be delivered administratively were implemented. Other recommendations that required legislative change were not supported by the government of the day.

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17. As predicted by Justice Thorp, maintaining controls over MSSAs has continued to be difficult in an environment where so called 'sporterised' semi-automatics can be readily converted to MSSAs. The scarcity value of MSSAs incentivises some to circumvent the controls.
18. A comprehensive Arms Amendment Bill was introduced in 2005. It sought to progress a number of the Thorp recommendations. That 2005 bill was reported back from the Law and Order Committee in 2012 and discharged.
19. A narrow Arms (Military Style Semi-automatic Firearms and Import Controls) Amendment Act 2012 (1992 Amendment Act) altered the definition of a MSSA to allow for regulations to specify pistol grip and for import controls over high powered airguns. It did not comprehensively review the regulatory regime for MSSAs to take into account changes in international manufacturing processes which essentially develop standard, semi-automatic firearms on military specifications.
20. Each year since 2010, proposals for substantial amendment to the Arms Act have been included in the previous Governments' Legislation Programme. For various reasons they have not progressed.
21. Since 1992, there have been substantial changes in the legal and illegal civilian armoury. There is an apparent increase in the possession of semi-automatic firearms – although, without any statutory recording requirement, it is not possible to know how many. Such firearms can be held under basic, 'A category', storage requirements and are therefore more vulnerable to burglary/theft. Also, with the addition of an unregulated part such as a high-capacity magazine, semi-automatics can be readily converted to a MSSA – thus avoiding the intended controls over such high-risk firearms.
22. Some of these statutory gaps were exploited by Quinn Patterson who illegally acquired an 'A category' semi-automatic through using a friend's firearms licence, and later converted it to a MSSA by adding a high capacity magazine³. He later shot three people, two fatally, in Northland in July 2017⁴.
23. In 2016, following Police's seizure of a cache of 14 firearms, including a number of MSSAs, the Law and Order Committee undertook an *Inquiry into the illegal possession of firearms in New Zealand*. This resulted in a majority report back (New Zealand First provided a minority report) with 20 recommendations, several of which sought to deliver some of the legislative changes promoted twenty years earlier by Justice Thorp. (An attachment lists the common Thorp and *Inquiry* recommendations.)

Accessibility to high-risk firearms appears to be increasing

24. In general, most members of the public do not encounter firearms or feel threatened by firearms as they go about their normal daily activity. Violent crime offences caused by firearms has remained relatively low at around 1.4%.

³ The purchase of high-capacity magazines is unregulated and does not require a firearms licence.

⁴ The prosecution against the friend is still before the court.

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25. Nevertheless, there has been an increase in presentation of firearms in commercial robberies and in drug related criminal activities. As shown in Table One below, the number of occurrences where firearms are involved in serious violence is high ranging from 7.8% to 45.6% when compared with the total number of those occurrences.

Table One: Percentage of firearm-related offences by occurrence compared with the total of those occurrences.

	2012/13	2013/14	2014/15	2015/16	2016/17
Murder	7.8%	16.3%	12.5%	9.7%	15.9%
Attempted murder	19%	30%	23.1%	34.6%	17.6%
Other Acts intended to cause injury	31.7%	29.3%	45.6%	39.6%	41.0%
Aggravated Robbery	9.7%	8.4%	9.8%	10.1%	11.6%

Source: NZ Police National Intelligence Centre

26. Frontline police are reporting an apparent change in the weapons of choice for gangs and organised criminal groups. In the last 12 months, high-risk firearms such as pistols, semi-automatics, MSSAs and ex-defence weapons⁵ have been seized by Police during warranted and warrantless searches.

Gaps in the regulatory framework are undermining Police's ability to manage legitimate use while maintaining safety and control

27. Gaps, omissions, errors and unclear drafting have become evident in various parts of the Arms Act over time. Some of these have been highlighted by the Courts as some individuals, concerned about the limitations on access to MSSAs and the associated scarcity-influenced price, seek to exploit the gaps. The following expands on some of the gaps in the regulatory framework.

Failure to provide for local manufacture – permit to procure not required

28. The limited Arms Act and Arms (Military Style Semi-automatic Firearms and Import Controls) Amendment Act 2012 did not provide for the possible manufacture of firearms in New Zealand or the conversion of a firearm to an MSSA by the owner of an 'A category' semi-automatic firearm.
29. This gap in the legislation has been identified and given some prominence by some activists in the firearms community⁶. There appears to be several parts to their approach.
30. One is to demonstrate there is currently no equivalent of a permit to procure or special reason for an owner to convert an 'A category' semi-automatic to an MSSA. Having converted the firearm to a MSSA, the licence holder is obliged to

⁵ NZDF sold some 2,500 semi-automatic firearms (converted from fully-automatic) to the public in 1990 before the Arms Amendment Act 1992 restricted the possession of such weapons.

⁶ FOUNZ (Firearm Owners United of New Zealand) is an internet community set up with the stated purpose "to stop the erosion of what they have". FOUNZ membership is largely anonymous.

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have that firearm endorsed on their licence but with no oversight of such transactions, Police is not able to enforce endorsement or the necessary security standards.

31. This gap undermines the intent of the Arms Amendment Act 1992 which sought, through strict controls, to limit the number of MSSAs in New Zealand.
32. In the *Lincoln v Police* [2013], the High Court noted that there was a legislative gap in the legislative scheme in that modification of a firearm already in possession to a MSSA firearm does not require a permit to procure and said that this "loophole" was "of concern". Resultant publicity has increased awareness of this legislative gap leading to an apparent increase in exploitation.

Section 9(2)(f)(iv) Official Information Act 1982

Circumventing import restrictions

33. Another apparent approach, by a small number of dealers is to avoid the import/special reason requirements by importing quantities of parts that are interchangeable between MSSAs and 'A category' semi-automatic firearms, and declaring the parts to be for 'A category' firearms. This enables domestic assembly and the assembler to later purchase parts such as a large-capacity magazine or pistol grip without a licence, and to turn the assembled 'A-category' semi-automatic into a MSSA. Having added a large capacity magazine or a MSSA-type pistol grip, the person is required to apply immediately for the correct endorsement on their licence. If not they will have knowingly committed an offence. Most 'fit and proper' licence holders would apply for the correct endorsement but they would have circumvented the special reason process, and undermined the objective of the 1992 Amendment Act, that is to limit the number of MSSAs in New Zealand.
34. Police has moved to limit this importing activity by determining that these parts must be considered as MSSA parts. However, this approach by Police is subject to legal challenge.

Exploiting the limited controls over 'A category' firearms

35. A situation with one of the MSSAs found in the cache of firearms that led to the Law and Order Committee Inquiry in 2016-2017, drew attention to yet another gap in the legislation associated with the ready interchangeability between MSSAs and 'A category' semi-automatics. In this case, the item was imported legally and later on-sold legally to a dealer, [redacted] Police records show [redacted] converted it back to an 'A category' firearm. It was then on-sold as an 'A category' firearm and finally seized in Auckland where it had been converted back to a MSSA at some time by someone unknown. A dealer is required to keep a record of all sales for five years. But, there is no requirement for an individual to record sales of 'A category' firearms. At present, Police Arms Officers advise individuals who may wish to convert a MSSA to an 'A category' firearm to present the firearm to the Police to confirm the conversion and for the associated endorsement to be removed from their licence.

Section 6(c) Official Information Act 1982

Section 6(c) Official Information Act 1982

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Exploiting the absence of statutory provision for on-line sales

36. An important development, and an example of the Act not keeping pace with technology relates to on-line sales. The Act enables sales by mail order and defines a process to support the seller to meet their obligation to only sell firearms to a person with a valid firearms licence. For mail order the purchaser must provide the seller with an order that has been signed by a member of Police and stating that Police has inspected the purchaser's firearms licence and is satisfied that the purchaser is 'fit and proper' to purchase the relevant firearm or ammunition.
37. There is no equivalent requirement for on-line sales. Police has sought to limit this gap by applying the mail order sales' provisions to internet sales. There is no legislative basis to this approach. It relies on the goodwill of the participants in the transaction and their acting in accordance with their having been assessed as 'fit and proper'. However, it leaves open the risk that an on-line seller can knowingly sell an 'A category' firearm with or without sighting the licence and, if ever questioned, declare that they assumed the buyer had presented a valid licence. TradeMe has overcome this risk through adopting a validation process with Police but there are many other on-line trading opportunities outside of TradeMe.

Avoiding the requirement for security inspection before taking possession of a MSSA

38. Inspection of security before an individual takes possession of a firearm is a key tool in mitigating against the risk of the firearms being stolen and misused. When a MSSA is manufactured domestically by an individual who has purchased the parts in kit form, there is no regulatory ability for Police to be made aware of the assembled MSSA prior to the person seeking endorsement on their licence or to inspect the security. Many in the firearms community will willingly co-operate and allow inspection but some have not and have challenged Police's right to prior inspection. The courts have drawn attention to this legislative gap.

Inability to suspend a licence pending revocation procedures

39. The licence revocation process existing in the Arms Act is a slow process. While firearms may be seized, the person retains their licence and therefore able to legally possess additional firearms. An exception relates to people subject to a protection order or a police safety order issued under the Domestic Violence Act 1995. The Arms Amendment Bill No 3 introduced in 2005 by the then Labour Government and the previous Government's response to the *Inquiry* recommendations both promoted the introduction of a licence suspension regime.

Police needs additional tools to help stem the flow of firearms to the criminal community.

40. The above lists some of the concerning gaps in the legislation. Exploitation of these gaps, and the associated publicity, is enabling gang members and those involved in organised criminal activity to access high-risk firearms.

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41. There are a number of other legislative amendments targeting gangs and organised crime that were promoted by the previous Government and included in the recommendations from the *Inquiry into illegal possession of firearms in New Zealand*. Among these is the recommendation to exclude gang members and their associates from being considered 'fit and proper' to obtain a firearms licence. This would allow Police to refuse a licence to someone who may not have convictions but who are known to have extensive connections with gang members. Other recommendations that would assist target criminal groups include the suspension of licences, adjusting penalties to reflect the criminal seriousness of the offence, and the introduction of firearms prohibition orders. The last provision would be pitched solely at the top-end gang members and high-risk individuals.

Section 9(2)(f)(iv) Official Information Act 1982

42. Section 9(2)(f)(iv) Official Information Act 1982

43. Section 9(2)(f)(iv) Official Information Act 1982

Part Two: Amendments to the Arms Regulations 1992 are needed to improve service delivery to firearm licence holders.

44. Enforcement alone cannot guarantee successful implementation of the Arms Act. It requires the support of the legitimate and law abiding firearms community. This was recognised by the Law and Order Committee in 2012 when it recommended the establishment of a technical advisory committee to Police.
45. Police has established the Firearms Community Advisory Forum (FCAF) which continues to meet both formally and informally with Police throughout the year. It is Police's intention to consult with the Forum in the first instance before any wider public consultation occurs on proposed changes to either the Act or Regulations once such proposals are approved for consultation.

Relationship with firearm owners will be improved through enabling on-line services

46. Police is keen to improve the efficiency of the application processes by offering on-line access and the ability to complete the licence holders test on-line. Such

⁷ **Category 1** must be passed or introduced in the year as a matter of law; **Category 2** must be passed in the year, **Category 3** to be passed if possible in the year, **Category 4** to be passed under extended sitting hours, **Category 5** to be referred to a select committee in the year, **Category 6** instructions to be provided to PCO in the year, **Category 7** on hold, **Category 8** not to proceed

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efficiencies are unable to be captured without amendment to the Arms Regulations 1992 (the Regulations).

47. The Regulations set out the administration procedures for dealers' and firearm owners' licences, and permits to procure. The current wording of the Regulations is premised on a paper-based licensing and permitting system. As such they unintentionally prevent the introduction of more user-friendly, web-based services.
48. Police is seeking your support to make the necessary, technical amendments to the Arms Regulations to enable the provision of on-line services. As the proposals represent minor policy changes, it is not necessary for this proposal to be considered by the Cabinet Social Policy Committee. Accordingly a draft Cabinet Legislation Committee paper has been prepared for circulation.
49. FCAF members and many in the wider firearms community have been pushing for the provision of on-line applications. The consequent improvement in efficiency and improvement in effectiveness will be viewed favourably by the firearms community.

Increase revenue generated through fees

50. The Act provides for prescribing and setting of fees. This is consistent with the principle that the service provided directly benefits the individuals and businesses receiving that service⁸. It enables individuals to use firearms in their business, recreational and sporting activities. It also recognises that constraints must be placed on individuals' uses of firearms in order to mitigate against the present risk of harm to public safety.
51. Current fees recovered from licence holders are insufficient to cover Police's basic licensing administration costs let alone the key monitoring and auditing activities required to deliver on the intent of the Act.
52. Currently, certain resource-demanding, and time-consuming services such as the provision of import permits, recognition of firing ranges, and approval of gun shows are provided free of charge.
53. The fees are set by regulation and published in the schedule to the Arms Regulations 1992. Other than for GST adjustment, several fees have remained unchanged from 1992. These include the annual dealer licence fee, the maximum 12 month visitor licence fee, the ten yearly endorsement fees and the fee for holding a gun show.
54. The ten year standard licence fee was set at \$110.00 exclusive of GST and has remained at that level since 1 February 1999. Approximately 80% of revenue is collected from the standard licence fee.
55. The shortfall in revenue over recent years is depicted in Table Two below.

⁸ The Treasury Guidelines for Setting Charges in the Public Sector, April 2017.

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Table Two: Shortfall in Revenue							
Years	10/11	11/12	12/13	13/14	14/15	15/16	16/17
Expenditure (\$ millions)	12.249	7.504	7.787	8.609	10.284	11.502	11.876
Revenue (\$ millions)	2.096	1.604	1.953	3.104	4.227	5.575	5.407
\$m Shortfall	-10.153	-5.9	-5.834	-5.505	-6.057	-5.927	-6.469
Tax payer contribution	83%	79%	75%	64%	59%	52%	55%

56. Police is developing a range of options for adjusting the fees so that the tax payer is no longer subsidising private interests and low demand standard licence holders are not subsidising those with significant commercial, recreational and sporting interests.
57. Investment in improvements in administration systems will introduce efficiencies which can be expected to offset the costs to delivering the standard licensing system.
58. In accordance with the Cabinet Manual, proposals for changes in fees require public consultation and Cabinet must approve the consultation document for release.
59. It can be expected that those who currently benefit from a free service will seek to retain that free service, others will acknowledge that better targeted revenue collection will incentivise improvements to the overall administration of the Act.

Section 9(2)(iv) Official Information Act

Consultation

60. Proposals to amend the Act and the Regulations relating to fees will require consultation with the community. As noted in paragraph 43 above consultation will occur with the FCAF in the first instance but will also require wider public consultation.
61. The formal FCAF meetings are currently scheduled for 7 March; 18 July and 13 December 2018.

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Proposed next steps

Section 9(2)(f)(iv) Official Information Act 1982



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Richard Chambers
Acting Deputy Commissioner: National Operations

First contact	Deputy Commissioner Mike Clement	Section 9(2)(a) Official Information Act 1982
Second contact	A/Supt Mike McLraith,	Section 9(2)(a) Official Information Act 1982

Staff listed as contacts should be available to take calls from the Minister outside of office hours.

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Attachment

Thorp recommendations similar to those made by the Law and Order Committee in 21	Inquiry recommendations	Previous government response
Make it clear that self-defence is not a legitimate purpose for the acquisition of firearms	Codify the 'fit and proper' criteria in the Arms Act	Reject
MSSAs, other than those used for professional pest control, be banned; a technical committee set up to settle the list of makes and models of firearms within the MSSA class That all centrefire semi-automatic firearms be limited to a magazine capacity of 7 cartridges.	Investigate the creation of a category of restricted semi-automatic rifle and shotgun	Reject - complicated matter look at in slower time.
A general amnesty be declared for a period of 12 months to recover surplus guns	Clarify and publicise the extent of amnesty provisions in the Arms Act; Publicise amnesty provisions.	Accept and progress in an Arms Amendment Bill Reject.
That present security regulations be replaced with provisions which fix levels of security proportionate to levels of risk;	Secure storage confirmed before licence or endorsement received. Allow Police to enter premises to inspect security of A category firearms.	Reject Reject

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<p>Security standards be overseen by a standing committee; monitoring of security be more actively undertaken by police;</p> <p>Licences not to be granted without inspection of security.</p>	<p>Determine the appropriate security standards for A category firearms</p> <p>Failure to comply with storage regulations to result in mandatory revocation</p>	<p>Accept working through with FCAF</p>
<p>That a new Firearms Act create offence for breaches of security provisions and for breaches of licensing and registration provisions;</p> <p>Provide a range of penalties appropriate to the seriousness of such offending.</p>	<p>Failure to comply with storage regulations to result in mandatory revocation</p> <p>Review the penalties in the Arms Act</p>	<p>Reject – but provide for suspension of licences.</p> <p>Progress in Arms Amendment Bill</p>
<p>That the sale of ammunition be limited to the types of ammunition appropriate to the firearms licences to the purchaser</p>	<p>A firearms licence required to possess ammunition</p> <p>A dealer's licence required to sell ammunition</p> <p>Dealer's required to keep records of ammunition sales</p>	<p>Reject</p>